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SUPREME COURT, U.S.**

No. 83-1355

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1983

Orange County and Kenneth Kienth,
Petitioners,
v.

Beatrice S. Wood and Sandra Surburg Ritter,
on behalf of themselves and all others similarly situated,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR
THE ELEVENTH CIRCUIT

Larry Morgan, Esq.
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Orlando, Florida 32805
(305)841-7777
Attorney for Respondents

QUESTION PRESENTED

Whether this Court should review a decision of the Eleventh Circuit Court of Appeals holding that since Respondents did not have a reasonable opportunity to raise their claims in the State Trial Court when Judgment was entered, or on appeal of that Judgment, the Trial Court had subject matter jurisdiction over their claims as raised for the first time in the form of a federal complaint brought under 42 U.S.C. Section 1983.

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Preliminary Matters Required by Rule 34, Rules of the
Supreme Court of the United States

Pursuant to Rule 34.2, Rules of the Supreme Court of the United States, the preliminary matters required by Rule 34.1(b), (d), (e) of the Supreme Court Rules have been omitted since they have been accurately set forth in the Petition for Certiorari.

STATUTORY PROVISION INVOLVED IN THE CASE,
28 U.S.C. Section 1331-Federal Question

The District Court shall have original jurisdiction of all actions arising under the Constitution, laws, or treaties of the United States.

STATEMENT OF THE CASE

The Statement of the Case as set forth in the Petition for Certiorari accurately states the material facts and procedural history of this case except for the following clarifications of facts and update on the procedural history.

The state court actions out of which the Respondents' constitutional claims arose involved criminal prosecutions and simultaneous collateral civil proceedings concerning the award of attorney's fees. The Respondents were represented by court appointed attorneys in the criminal prosecutions but had no representation to defend against the actions for attorney's fees brought against them by their court appointed attorneys. (R.O.A. 367, 377, 380.) Respondents further were not provided any opportunity to personally participate in the proceedings against them concerning the award of attorney's fees. (R.O.A. 380.) Finally, the Respondents had no reason to believe that any response to awards of attorney's fees against them was necessary until they received notice of the awards of attorney's fees through collection letters received eleven (11) months after

the Orders on Attorney's fees had been entered. (R.A.A. 367, 369, 378, 380, 381.)

The update on the procedural history of this case since the entry of the Opinion by the Eleventh Circuit Court of Appeals involves attempts by the Petitioners to stay the mandate of the Eleventh Circuit Court of Appeals. On December 2, 1983, the Eleventh Circuit Court of Appeals stayed mandate for sixty (60) days pending the filing of a Petition for Certiorari by the Petitioners. In January of 1984 the Petitioners filed a Motion for Extension of Stay of Mandate and on February 8, 1984 the Eleventh Circuit Court of Appeals extended the Stay of the Mandate conditioned by the filing of a Petition for Certiorari with this Court by February 10, 1984. Since the Petition for Certiorari was not filed by February 10, 1984, the Eleventh Circuit Court of Appeals issued its Mandate on February 28, 1984 and denied the Petitioners' Motion to Recall the Mandate on March 15, 1984.

ARGUMENT

I. THE DECISION OF THE ELEVENTH CIRCUIT COURT OF APPEALS IN THIS CASE DOES NOT CONFLICT WITH THIS COURT'S HOLDING IN DISTRICT OF COLUMBIA, COURT OF APPEALS VS. FELDMAN.

Petitioners are seeking certiorari review by this Court on the sole basis that the decision entered by the Eleventh Circuit Court of Appeals in this case conflicts with the recent opinion rendered by this Court in District of Columbia, Court of Appeals vs. Feldman, ___ U.S. ___, 103 S.Ct 1303, 75 L.Ed.2d 206 (1983). The Petitioners' premise for seeking review by this Court is flawed. The Eleventh Circuit Court of Appeals Opinion clearly accepted the holding in Feldman as controlling precedent to the instant case. As is the common practice of lower courts, the Eleventh Circuit Court of Appeals in interpreting this Court's decision in Feldman simply clarifies applicability of the holding in Feldman consistent with the concerns about federal court review of

state court proceedings as expressed in Feldman. Petitioners' attempt to obtain a reversal of the decision of the Eleventh Circuit with which it does not agree.

The thrust of this Court's holding in Feldman concerns the inappropriateness of a Federal court deciding federal issues that are "inextricably intertwined" with a state court's judgment. Federal issues can only become part of a state court proceeding if they are actually raised or could have been raised in the state court proceeding. There is no dispute between the parties in the instant case that the Respondents did not raise any federal issues in the state court proceeding, and that the Orders entered by the State Court in no way addressed any federal issues. Additionally, the Eleventh Circuit of Appeals evaluated the factual allegations concerning the procedural history of the state court proceedings and determined that the federal issues raised by the Respondents in their federal action could not have been reasonably raised by the Respondents in the state court proceeding.

Petitioners have not argued that the holding in Feldman extends to those situations in which federal issues were not raised in state court because the party had no reasonable opportunity to do so. The Petitioners in their argument have failed to demonstrate how the Eleventh Circuit's clarification on the holding in Feldman that federal court review can only be barred if the party had reasonable opportunity to raise federal issues in a state court proceeding and failed to do so conflicts with the Court's intentions in Feldman to bar review by federal courts of federal issues that are "inextricably intertwined" with a state court judgment. Rather than arguing that the Eleventh Circuit's opinion conflicts with the holding in Feldman, the Petitioners' argument focuses upon their disagreement with the Eleventh Circuit on the question of what constitutes a reasonable opportunity to raise federal issues in a state court proceeding.

A disagreement with a decision of a Circuit Court of Appeals is not a sufficient basis for obtaining certiorari review. It has been said on numerous occasions by members of this Court that the Supreme Court is not primarily concerned with the correction of asserted errors in lower court decisions. As former Chief Justice Taft indicated, "the jurisdiction of the Supreme Court to review cases by way of certiorari was not conferred upon this Court merely to give the defeated party in the Circuit of Appeals another hearing. Our experience shows that 80% of those who petition for certiorari do not appreciate these necessary limitations upon our issue of the Writ." Magnum Company vs. Coty, 262 U.S. 159, at 163(1923). See also: Stern and Gressman, Supreme Court Practice, 50 Ed. 1978, pages 258-59, 297-98. Therefore, consistent with its past practice, this Court should not grant certiorari in the instant case to correct an asserted error by the Eleventh Circuit when the Eleventh Circuit's Appeal does not conflict with this Court's holding in Feldman.

- II. THIS COURT'S DECISION IN DISTRICT OF COLUMBIA, COURT OF APPEALS VS. FELDMAN, PROVIDES AN ADDITIONAL BASIS FOR SUPPORTING THE DECISION OF THE ELEVENTH CIRCUIT COURT OF APPEALS THAT WAS NOT RELIED UPON BY THE ELEVENTH CIRCUIT IN ITS DECISION BELOW FOR HOLDING THAT THE TRIAL COURT HAD SUBJECT MATTER JURISDICTION TO HEAR RESPONDENTS' CLAIMS.

For purposes of determining the appropriateness of federal court review, this Court in Feldman clearly recognized a distinction between claims in which individuals are seeking review of a particular judgment on constitutional grounds and a general challenge to the constitutionality of a particular practice. The significance of the distinction as indicated by this Court in Feldman lies in the fact that a federal court asked to review a general challenge to the constitutionality of a particular practice does not necessarily involve the review of a final state court judgment. Respondents would submit

that the Eleventh Circuit Court of Appeals could have correctly affirmed the trial court's finding that it had subject matter jurisdiction to hear the Respondents' federal claim based upon recognition that the Respondents' federal court action involved a general challenge to the constitutionality of the attorney fee recoupment practices concerning court appointed attorneys in the state court criminal prosecutions.

Although the Eleventh Circuit chose not to rely upon the characterization of the Respondents' Complaint as a general challenge to the constitutionality of the attorney fee recoupment system, the Eleventh Circuit noted that "under Feldman the District Court arguably would have jurisdiction if Plaintiffs' action can be characterized as a general challenge to the constitutionality of the practice of requiring indigent defendants to sign an Appointment of Counsel form waiving all procedural rights with respect to the lien hearing period" (Petitioners' Appendix A, page 5(a), note 1). Respondents would submit that the form of the federal court action brought by them and the relief sought clearly demonstrate that their federal suit was brought as a general challenge to the constitutionality of the attorney fee recoupment system.

The Respondents brought their suit as a class action seeking to represent all other individuals that had been subjected to the same constitutional deprivations they experienced in connection with the attorney fee recoupment system. (R.O.A. 380.) The Respondents were seeking certification as a class pursuant to Rule 23(b)(2), Fed.R.Civ.P., asserting that the Petitioners acted on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole. (R.O.A. 380.) Finally, the relief sought by the Respondents was clearly directed at challenging the attorney fee recoupment system generally. (R.O.A. 380.)

The Respondents sought an order declaring various aspects of the attorney recoupment system to be unconstitutional and enjoining any further such practices. The Respondents' Complaint alone serves to demonstrate that their federal suit was not an attempt simply to obtain review of particular orders entered in their criminal prosecution. The Respondents were seeking review of an established practice in the County to use a form affidavit of indigency that because of certain waiver of rights language contained therein Respondents alleged it had the effect of denying their constitutional rights under the Sixth and Fourteenth Amendments to the United States Constitution. The trial court could have considered these claims without reviewing the merits of any order or judgment entered by the state courts. Therefore, this Court should not grant certiorari to review a decision of the Eleventh Circuit Court of Appeals whose affirmance of the trial court's order can be supported by the holding in Feldman.

CONCLUSION

Petitioners have not asserted any recognized basis for this Court to grant certiorari to review the decision of the Eleventh Circuit Court of Appeals. Although the Petitioners seem to suggest that the decision of the Eleventh Circuit conflicts with this Court's Opinion in Feldman they failed to demonstrate that any real conflict exists. The Petitioners disagree with the Eleventh Circuit's finding that the Respondents did not have a reasonable opportunity to raise their federal claims in the state court's proceedings but have now argued that this Court held in Feldman that it was inappropriate for a federal court to review federal claims that an individual had no reasonable opportunity to raise in a state court proceeding. In addition, the Respondents' Complaint can be appropriately characterized as a general challenge to the constitutionality of various aspects of the attorney recoupment system involved in the state court actions which does not

require the kind of federal court review of a state court judgment prohibited by Feldman. For the above-stated reasons, the Petition for Certiorari should be denied.

Larry Morgan
 for LARRY MORGAN, ESQUIRE
 Greater Orlando Area Legal Services
 1036 West Amelia Street
 Orlando, Florida 32805
 (305) 841-7777
 Attorney for Respondents

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing Brief in Opposition to Petition for Certiorari has been mailed this 10 day of April, 1984 to PHILIP H. TREES, ESQUIRE, Gray, Harris & Robinson, P.A., Post Office Box 3068, Orlando, Florida 32802, Attorney for Petitioners.

Larry Morgan
 for LARRY MORGAN, ESQUIRE

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ORANGE COUNTY and KENNETH KIENH, ^{KL}

Petitioners,

v.

BEATRICE S. WOOD and SANDRA SURBURG RITTER,
on behalf of themselves and all others
similarly situated,

Respondents.

MOTION TO PROCEED IN FORMA PAUPERIS IN OPPOSITION
TO PETITION FOR CERTIORARI

COMES NOW, SANDRA SURBURG RITTER and BEATRICE S. WOOD,
on behalf of themselves and all others similarly situated,
by and through their undersigned attorneys, and motions this
Court for leave To Proceed In Forma Pauperis pursuant to
Sup.Ct. Rule 46 and as grounds therefore states:

1. The Respondents seek to oppose the Petition for
Writ of Certiorari and are unable to pay for costs or give
security therefore as is more particularly set out in the
attached affidavit from the Respondent, SANDRA S. RITTER.

2. Leave to Proceed to In Forma Pauperis was sought
and granted in the following courts:

(a) In the Circuit Court of the Ninth Judicial
Circuit in and for Orange County, Florida, Criminal
Case No. CR 77-266, State vs. Ritter;

(b) In the Circuit Court of the Ninth Judicial
Circuit in and for Orange County, Florida, Information
No. MO 77-2608, State vs. Wood;

(c) The United States District Court for the Middle
District of Florida, Orlando Division, Case No. 79-408-
ORL-CIV, In Forma Pauperis Affidavits and Orders entered

on behalf of BEATRICE WOOD and SANDRA RITTER.

3. That the Affidavit of SANDRA S. RITTER is attached. BEATRICE S. WOOD was out of state and unavailable to sign an affidavit.

WHEREFORE, the Respondents move the Court to enter an Order allowing her and/or them to proceed In Forma Pauperis pursuant to U.S. S.Ct. Rule 46.

Dated this 10 day of April, 1984.

for Gary W. Morgan
LARRY MORGAN, ESQUIRE
Greater Orlando Area Legal Services
1036 West Amelia Street
Orlando, Florida 32805
(305) 841-7777
Attorney for Respondents

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing Motion to Proceed In Forma Pauperis In Opposition to Petition for Certiorari has been mailed this 10 day of April, 1984 to PHILIP H. TREES, ESQUIRE, Gray, Harris & Robinson, P.A., Post Office Box 3068, Orlando, Florida 32802, Attorney for the Petitioners.

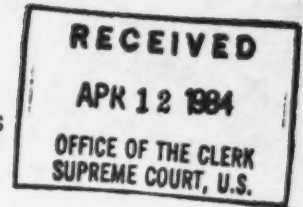
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ORANGE COUNTY and KENNETH KIENH,

Petitioners,

v.

BEATRICE S. WOOD and SANDRA SURBURG RITTER,
on behalf of themselves and all others
similarly situated,

Respondents.

AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED IN FORMA PAUPERIS
IN OPPOSITION TO PETITION FOR CERTIORARI

I SANDRA S. RITTER, being first duly sworn depose and say that I am a Respondent, in the above-entitled case; that in support of my motion to proceed to reply to the Petition for Writ of Certiorari to the United States Court of Appeals, Eleventh Circuit, without being required to prepay fees, costs or give security therefore, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefore; that I believe that I am entitled to redress; and that the issues which I desire to present on appeal are the following:

Whether or not the United States District Court has subject matter jurisdiction over me in a suit arising out of liens entered against me and the class I represent, pursuant to a Florida Statute, for the value of legal services provided me in a criminal case, when those liens were entered in violation of my due process rights?

I further swear that the response which I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting the appeal are true.

1. Are you employed?

a. No.

b. My last employment was with Perkins Restaurant on I-92, Kissimmee, Florida. I was employed for approximately two (2) weeks as a waitress making \$2.01 per hour plus tips. I worked an average of 26 hours a week and was forced to leave the job for lack of transportation. Prior to that I worked for one and one-half (1½) months for Ceramic Tile out of Lake Mary, Florida, and earned approximately \$600 per month. Prior to that I worked in November of 1982 for Bahama Joe's Restaurant as a waitress, earning approximately \$2.01 plus tips.

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source?

a. Yes. I received income from June of 1983 to November of 1983. I received Aid to Families for Dependent Children in the amount of \$172.00 per month, which was used for the support of me and my child. In addition, I earned \$600.00 per month for one and one-half (1½) months from Ceramic Tile, as mentioned above.

3. Do you own any cash or checking or savings account?

a. No.

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

a. Yes. A 1976 van which is presently disabled and will take a major repair which I cannot afford.

5. List the persons who are dependent upon you for support and state your relationship to those persons.

Son: Robert Joseph Ritter, Jr., age 10 years.

I understand that a false statement or answer to any questions
in this affidavit will subject me to penalties for perjury.

Sandra S. Ritter
Sandra S. Ritter

Subscribed and Sworn to before me this 6 day
of April, 1984.

NOTARY PUBLIC, STATE OF FLORIDA AT LARGE
MY COMMISSION EXPIRES FEB. 1, 1985
Bonded by Accredited Surety & Casualty Co., Inc.
Orlando, Florida 841-8500

Gary W. Udouj
Gary W. Udouj

Let the applicant proceed without
prepayment of costs or fees or the
necessity of giving security there-
for.

COURT